

107TH CONGRESS
1ST SESSION

S. 1154

To preserve certain actions brought in Federal court against Japanese defendants by members of the United States Armed Forces held by Japan as prisoners of war during World War II.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2001

Mr. SMITH of New Hampshire (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To preserve certain actions brought in Federal court against Japanese defendants by members of the United States Armed Forces held by Japan as prisoners of war during World War II.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for United
5 States Prisoners of War Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) During World War II, members of the
2 United States Armed Forces held as prisoners of
3 war by Japan were forced to provide labor for Japa-
4 nese privately owned corporations in functions unre-
5 lated to the prosecution of the war.

6 (2) International law, including international
7 conventions relating to the protection of prisoners of
8 war, was violated when these Japanese
9 corporations—

10 (A) failed to pay wages to captured United
11 States servicemembers for their labor;

12 (B) allowed and promoted torture and mis-
13 treatment of captured United States
14 servicemembers; and

15 (C) withheld food and medical treatment
16 from captured United States servicemembers.

17 (3) In the Treaty of Peace with Japan, signed
18 at San Francisco September 8, 1951 (3 UST 3169),
19 the Government of Japan admitted liability for ille-
20 gal conduct toward the Allied Powers and, in par-
21 ticular, liability for illegal and inhumane conduct to-
22 ward members of the armed forces of the Allied
23 Powers held as prisoners of war.

24 (4) Despite this admission of liability, Article
25 14(b) of the Treaty has been construed to waive all

1 private claims by nationals of the United States, in-
2 cluding private claims by members of the United
3 States Armed Forces held as prisoners of war by
4 Japan during World War II.

5 (5) Under Article 26 of the Treaty, the govern-
6 ment of Japan agreed that if Japan entered into a
7 war claims settlement agreement with a country that
8 is not a party to the Treaty that provides more fa-
9 vorable terms to that country than the terms Japan
10 extended to the parties to the Treaty, then Japan
11 would extend those more favorable terms to each of
12 the parties to the Treaty, including to the United
13 States.

14 (6) Since the entry into force of the Treaty in
15 1952, the Government of Japan has entered into
16 war claims settlement agreements with countries
17 that are not party to the Treaty that provide more
18 favorable terms than those extended to the parties to
19 the Treaty, such as terms that allow claims by na-
20 tionals of those countries against Japanese nationals
21 to be pursued without limitation, restriction, or
22 waiver or any type.

23 (7) In accordance with Article 26 of the Treaty,
24 Japan is obligated to extend those same favorable
25 terms to the United States, including to nationals of

1 the United States, who as members of the United
2 States Armed Forces, were held as prisoners of war
3 by Japan during World War II and who were forced
4 to provide labor without compensation and under in-
5 humane conditions.

6 (8) The people of the United States owe a deep
7 and eternal debt to the heroic United States
8 servicemembers held as prisoners of war by Japan
9 for the sacrifices those servicemembers made on be-
10 half of the United States in the days after the igno-
11 minious aggression of Japan against the United
12 States at Pearl Harbor, Bataan, and Corregidor.

13 (9) The pursuit of justice by those
14 servicemembers through lawsuits filed in the United
15 States, where otherwise supported by Federal, State,
16 or international law, is consistent with the interests
17 of the United States and should not be preempted
18 by any other provision of law or by the Treaty.

19 (10) Despite repeated requests for disclosure by
20 United States servicemembers, the Department of
21 Veterans Affairs, and Congress, the United States
22 Government has withheld from those servicemembers
23 and their physicians Japanese records that were
24 turned over to the United States and that relate to
25 chemical and biological experiments conducted on

1 United States servicemembers held as prisoners of
2 war by Japan during World War II.

3 **SEC. 3. SUITS AGAINST JAPANESE NATIONALS.**

4 (a) IN GENERAL.—In an action brought in a Federal
5 court against a Japanese defendant by a member of the
6 United States Armed Forces who was held as a prisoner
7 of war by Japan during World War II that seeks com-
8 pensation for mistreatment or failure to pay wages in con-
9 nection with labor performed by such a member to the
10 benefit of the Japanese defendant during World War II,
11 the court—

12 (1) shall apply the applicable statute of limita-
13 tions of the State in which the Federal court hearing
14 the case is located;

15 (2) shall not construe Article 14(b) of the Trea-
16 ty as constituting a waiver by the United States of
17 claims by nationals of the United States, including
18 claims by members of the United States Armed
19 Forces, so as to preclude the pending action.

20 (b) SUNSET.—Paragraph (1) of subsection (a) shall
21 cease to apply at the end of the 10-year period beginning
22 on the date of enactment of this Act.

1 **SEC. 4. APPLICABILITY OF RIGHTS UNDER ARTICLE 26 OF**
2 **THE TREATY OF PEACE WITH JAPAN.**

3 It is the policy of the United States Government to
4 ensure that all terms under any war claims settlement
5 agreement between Japan and any other country that are
6 more favorable than those terms extended to the United
7 States under the Treaty, will be extended to the United
8 States in accordance with Article 26 of the Treaty with
9 respect to claims by nationals of the United States who,
10 as members of the United States Armed Forces, were held
11 as prisoners of war by Japan during World War II and
12 who were forced to provide labor without compensation
13 and under inhumane conditions.

14 **SEC. 5. AVAILABILITY OF INFORMATION RELATING TO CER-**
15 **TAIN CHEMICAL AND BIOLOGICAL TESTS**
16 **CONDUCTED BY JAPAN DURING WORLD WAR**
17 **II.**

18 (a) AVAILABILITY OF INFORMATION TO THE SEC-
19 RETARY OF VETERANS AFFAIRS.—Notwithstanding any
20 other provision of law, the Secretary of Veterans Affairs
21 may request from, and the head of the department or
22 agency so requested shall provide to the Secretary, infor-
23 mation relating to chemical or biological tests conducted
24 by Japan on members of the United States Armed Forces
25 held as prisoners of war by Japan during World War II,

1 including any information provided to the United States
2 Government by Japan.

3 (b) AVAILABILITY OF INFORMATION TO INTERESTED
4 MEMBERS OF THE ARMED FORCES.—Any information re-
5 ceived by the Secretary of Veterans Affairs under sub-
6 section (a), with respect to an individual member of the
7 United States Armed Forces held as a prisoner of war
8 by Japan during World War II, may be made available
9 to that individual to the extent otherwise provided by law.

10 **SEC. 6. DEFINITIONS.**

11 In this Act:

12 (1) JAPANESE DEFENDANT.—

13 (A) IN GENERAL.—The term “Japanese
14 defendant” means a Japanese national, an enti-
15 ty organized or incorporated under Japanese
16 law, an affiliate of an entity organized or incor-
17 porated under Japanese law that is organized
18 or incorporated under the laws of any State,
19 and any predecessor of that entity or affiliate.

20 (B) LIMITATION.—The term does not in-
21 clude the Government of Japan.

22 (2) STATE.—The term “State” means the sev-
23 eral States, the District of Columbia, and any com-
24 monwealth, territory or possession of the United
25 States.

1 (3) TREATY.—The term “Treaty” mean the
2 Treaty of Peace with Japan, signed at San Fran-
3 cisco on September 8, 1951 (3 UST 3169).

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